REMARKS

Discussion of the Amendment to the Claims

As presently amended, claims 1 to 5, and claims 13 and 14 are pending in this application.

Claim 1 has been amended to remove alkoxycarbonyl as a possible value for R_1.

Claim 1 has been amended also to remove hydrogen as a possible value for R_3 or R_4.

Claim 1 has also been amended to remove the radical –O-Alk-NR_9R_{10} as a possible value for R_3 or R_4.

The proviso at the end of claim 1, as originally presented, has been removed, in that it recited –O-Alk-NR_9R_{10}. Because this radical, as a possible value for R_3 or R_4 has been removed by the present amendment, this original proviso has been rendered moot.

The provisos to claim 1 that were added in Applicants' amendment of January 8, 2008, have been removed by the present amendment.

Claims 2 and 3 have been amended accordingly to remove subject matter removed from claim 1.

Claim 4 has been amended to remove specific compounds no longer encompassed by claim 1 by virtue of the present amendment.

These amendments to the claims add no new matter.

Discussion of Examiner's Withdrawal of Certain Rejections

Applicants note with appreciation the Examiner's indication that the rejection of claims 1 and 2 under 35 U.S.C. § 102(a) over Bora and over Kakehi have been withdrawn. (Final Action at 2).

Applicants note with appreciation also the Examiner's indication that the rejection of claims 13 and 14 under 35 U.S.C. § 112, second paragraph, have been withdrawn. (Final Action at 2).

Discussion of the Rejections Under 35 U.S.C. § 112

Claims 1 to 5, 13 and 14 are currently rejected under 35 U.S.C. § 112, first paragraph as, the Examiner contends, "...the proviso [added to claim 1 in Applicants' amendment of January 8, 2008] is new matter." (Final Action at 4).

Without acquiescing to the propriety of this rejection, and in order to further the prosecution of this application, the pertinent provisos have been removed by the present amendment, thereby rendering the Examiner's rejection moot.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 are respectfully requested.

Discussion of the Rejections Under 35 U.S.C. § 102(b)

The Examiner has maintained a rejection, in part, under 35 U.S.C. § 102(b) over Wei et al., Journal of the Chemical Society, Perkin Transactions 1: Organic and Bio-organic chemistry, 1993, Vol. 20, pages 2487-9 (hereinafter, "Wei et al."). Applicants note with appreciation the Examiner's indication that compounds RN 25627-81-0 and RN25627-86-5 (both as presented at page 6 of the Examiner's previous Office Action with Notification Date of July 10, 2007) are not

encompassed by the claims of the present application, as originally presented. (Final Action at 3)

The Examiner maintains the rejection of claims 1 and 2 over Wei et al., in view of compound RN 17281-79-7, 3-benzoyl-1-indolizine carboxylic acid, methyl ester. This compound requires a methoxycarbonyl group at the position analogous to R_1 of Formula (I) of the present application, and requires that the benzoyl group in the 3-position of the indolizine ring be unsubstituted.

The Examiner maintains the rejection over Wei et al. also, in view of compound RN 154224-59-6, benzoyl-2-methyl indolizinecarboxylic acid, methyl ester. This compound also requires a methoxycarbonyl group at the position analogous to R_1 of the present application, and an unsubstituted benzoyl group at the 3-position.

As presently amended, R_1 of Formula (I) can not take on the value of alkoxycarbonyl (thus, can not take on the value of methoxycarbonyl). Further, because R_3 and R_4 of Formula (I) can not be hydrogen (as presently amended), the benzoyl group at the 3-position of the compounds of Formula (I) must be disubstituted, and can not take on the value of a simple benzoyl group.

Accordingly, the compounds as disclosed by Wei et al. are not encompassed by the claims of the present application.

Given the fact that the provisos as presented in Applicants previous response have been removed, the Examiner maintains rejections of claims 1 and 2 over Tamura et al., Journal of the Chemical Society, Perkin Transactions 1: Organic and Bio-organic Chemistry, 1973, Vol 19, pages 2091-5 (hereinafter, "Tamura et al."). (Final Action at 4).

The relevant compound of Tamura et al. is compound VI, found at page 2092. This compound requires a methoxycarbonyl group at the position analogous to R_1 of the present application, and an unsubstituted benzoyl group at the 3-position of the indolizine ring. As

discussed above for Wei et al., these values are not encompassed by the claims as presently amended.

Given the fact that the provisos as presented in Applicants previous response have been removed, the Examiner maintains rejections of claims 1 and 2 over Overzet et al., Journal of Pharmaceutical and Biomedical Analysis, 1984, Vol. 2, pages 3-17 (hereinafter, "Overzet et al."). (Final Action at 4).

In the Examiner's previous Office Action, the Examiner pointed out compound RN94419-24-6, [4-[3-(dibutylamino)propoxy]phenyl](2-ethyl-1-hydroxy-3-indolizinyl) methanone, of Overzet et al. (Examiner's previous Office Action at 7).

This compound requires monosubstitution of the benzoyl group at the 3-position of the indolizine ring. As presently amended, the compounds of the present application must be disubstituted.

Further, the compound of Overzet et al. requires that the benzoyl group be substituted with a 3-(dibutylamino)propoxy group at the 4-position. As presently amended, R_4 can not take on the value of $-O\text{-}Alk\text{-}NR_9R_{10}$.

Accordingly, the compounds of Overzet et al. are not encompassed by the claims of the present specificaition.

Thus, in view of the present amendment and remarks, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b) are respectfully requested.

Discussion of the Obviousness Type Double Patenting Rejections

Claims 1 to 5, and claims 13 and 14 are maintained as provisionally rejected under the judicially created doctrine of obviousness-type double patenting as, the Examiner alleges, being unpatentable over claims 1-5, 7-10 of U.S. 2006/0199962. (Examiner's previous Office Action

at 4, and current Final Action at 2). Applicants note with appreciation the Examiner's indication that "a timely filed terminal disclaimer can overcome this rejection." (Final Action at 2).

Because this is a provisional rejection, and because no claims have yet been deemed allowable in this application or in U.S. 2006/0199962, Applicants will address this rejection, and the issue of Terminal Disclaimer, when this obviousness-type double patenting rejection is the sole remaining issue.

However, Applicants point out the U.S. 2006/0199962 application has a priority date of September 18, 2003. The present application has a priority date of April 4, 2002.

Thus it appears as though any Terminal Disclaimer required would be required for U.S. 2006/0199962, and not for the present application.

In view of the above amendment and remarks, Applicants submit that the claims of the present application are novel and non-obvious over the prior art, and comply with the requirements of 35 U.S.C. § 112. Accordingly, allowance and passage to issue of claims 1 to 5, and 13 and 14 are respectfully requested.

Respectfully submitted,

Dated: May 8, 2008

Paul R. Darkes, Reg. No., 33,862
Attorney for Applicants

sanofi-aventis U.S. Inc.
Patent Department
Route #202-206 / P.O. Box 6800
Bridgewater, New Jersey 08807-0800
Telephone: 610-889-8458
Telefax: 908-231-2626

sanofi-aventis Docket No. SSL0082 US PCT